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53 S. E. 692, 6 L. R. A. (N. S.) 283, 4 Ann. Cas. 675; *Palmer* v. *Oregon Short Line R. Co.*, 34 Utah 466, 98 Pac. 689, 16 Ann. Cas. 229. In a few states, however, it is held that a railroad company must use ordinary care to discover all trespassers, and will be liable for any injuries caused by a failure to perform this duty. *Bottoms* v. *Seaboard, etc., Ry. Co.*, 114. N. C. 699, 19 S. E. 730, 41 Am. St. Rep. 799; *Mason* v. *Southern Ry. Co.*, 58 S. C. 70, 36 S. E. 440, 53 L. R. A. 913, 79 Am. St. Rep. 826. But this doctrine, contravening as it does well settled principles as to the duty owed trespassers, seems unsound and based on no satisfactory ground. *Cleveland, etc., Ry. Co.* v. *Tartt* (C. C. A.), 99 Fed. 369, 49 L. R. A. 98. See COOLEY, TORTS, 2nd ed., 792.

RAILROADS—LICENSE—RIGHT OF WAY.—A railroad company owning a right of way of definite width sought to enjoin the erection of a brick building upon an unused part thereof by the owner of the fee. *Held*, no injunction lies. *Atlantic Coast Line Railroad* v. *Bunting* (N. C.), 84 S. E. 1009.

In spite of the frequent occurrence of the point involved, there are various holdings, that of the principal case being contrary to the weight of authority. A railroad company, after having obtained the right of way for its road, is entitled to the exclusive possession of such way. *Walsh* v. *Virginia & T. R. Co.*, 8 Nev. 110. As to adjoining owners, it stands in the common relation existing between proprietors of lands bordering on each other. *Pittsburgh, C. & St. L. Ry. Co.* v. *Jones*, 86 Ind. 496, 44 Am. Rep. 334. When its charter limits the amount of land the railroad may have in its right of way, the company is entitled to determine the amount needed. *Nashville, C. & St. L. Ry.* v. *McReynolds* (Tenn. Ch.), 48 S. W. 258. And in an action it is not necessary for the company to allege that the whole right of way is used or is essential to the use of the railroad. *Southern Railway* v. *Beaudrot*, 63 S. C. 266, 41 S. E. 299.

Though a railroad can not alienate its right of way or any part so as to interfere with full performance of the functions of the road, it may license a third person to use the right of way in any manner not incompatible with the actual use by the railroad. *Mize* v. *Rocky Mt. Bell Telephone Co.*, 38 Mont. 521, 100 Pac. 971. And without this license or permission of the company, third persons, not even the grantor, may encroach on the right of way. *New York Cent. & H. R. R. Co.* v. *City of Buffalo*, 85 Misc. Rep. 78, 147 N. Y. Supp. 209.

The decision of the principal case seems unsound, on principle. The grant to the company transferred a right of way of definite width, a part of which the servient owner now seeks to reoccupy. In order to prevent the loss of its land by prescription, the company must offer resistance to this encroachment for, if the servient owner should by adverse acts lasting through the prescriptive period obstruct the dominant owner's enjoyment, intending to deprive him of the easement, he may by prescription acquire the right to use his own land free from the easement and thus extinguish it. *Woodruff* v. *Paddock*, 130 N. Y. 618, 29 N. E. 1021. Or, if the resistance is not offered, the defendant would have a license by implication, for a license may be implied, no

particular formalities being necessary to its creation. *Fletcher* v. *Evans,* 140 Mass. 241, 2 N. E. 837. See MINOR, REAL PROP., § 134. Therefore the erection of the building must be prevented, else the company will not be permitted to revoke its implied license. A servient owner may extinguish an easement by performing acts thereon permanently obstructive of the easement under the license or authority of the owner of the easement, for in such case the license is irrevocable if it authorizes acts involving an expenditure, and such expenditure has been made in whole or in part. *Boston & P. R. Corp.* v. *Doherty,* 154 Mass. 314, 28 N. E. 277.

REWARDS—OFFER BY STATUTE—KNOWLEDGE OF OFFER.—The governor, authorized by statute, offered a reward for the arrest and conviction of certain criminals. Plaintiffs complied with the conditions of the reward without knowledge that it had been offered. After learning of the offer, they made demand for the reward and were refused. *Held,* the plaintiffs can recover. *Smith* v. *State* (Nev.), 152 Pac. 512.

On principle and by the weight of authority a reward, offered by a private citizen, is an ordinary contract requiring knowledge of the offer, and acceptance by compliance with its conditions. *Williams* v. *West Chicago Street R. Co.,* 191 Ill. 610, 61 N. E. 456, 85 Am. St. Rep. 278; *Broadnax* v. *Ledbetter,* 100 Tex. 375, 99 S. W. 1111, 9 L. R. A. (N. S.) 1057; *Ensminger* v. *Horn,* 70 Ill. App. 605; also see 2 VA. L. REV. 77. However some very respectable authorities maintain that a previous knowledge of the offer is not necessary for a recovery in such cases; the reward is but a bounty offered in the spirit of liberality, and not as a just equivalent for the service requested. *Eagle* v. *Smith,* 4 Houst. (Del.) 293. But this is not sound, for gratuities or mere promises of a gift do not create legal liability. *Lowe* v. *Bryant,* 32 Ga. 235. It has also been suggested that the real ground for recovery is that the sole purpose of the offerer is to obtain performance of the desired act, which is a condition precedent to the right to recover, and the motive which induced the claimant to perform the services is immaterial; thus prior knowledge is unnecessary. *Dawkins* v. *Sappington,* 26 Ind. 199; *Everman* v. *Hyman,* 26 Ind. App. 165, 28 N. E. 1022, 84 Am. St. Rep. 284. This also seems to be the holding of the English courts. *Williams* v. *Cawardine,* 4 Barn. & Adol. 621. But where there has been only part performance of the conditions before knowledge of the offer, and after learning of the reward the performance is completed, the completion furnishes sufficient consideration for a recovery of the whole. *Hoggard* v. *Dickenson* (Mo.), 165 S. W. 1135.

The courts have attempted to distinguish between cases where the reward is offered by a private citizen and where it is offered by the governor with authority of statute. *The Auditor* v. *Ballard,* 9 Bush. (Ky.) 572; see *Clinton County* v. *Davis,* 162 Ind. 60, 69 N. E. 680, 1 Ann. Cas. 282. *Contra, Smith* v. *Vernon County,* 188 Mo. 501, 87 S. W. 949, 70 L. R. A. 59. This distinction is based on grounds of public policy, as it is to the interest of the state for its citizens to know that whoever prevents the final escape of a fugitive from justice will entitle himself to whatever reward it may offer. *The Auditor* v. *Ballard, supra.* Where